

CIVIL SERVICE COMMISSION MINUTES

AUGUST 18, 2004

A Special Meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Marc Sandstrom
A.Y. Casillas
Gordon Austin
Barry I. Newman
Francesca Krauel

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission**

September 1, 2004

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
AUGUST 18, 2004

9:00 a.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,6,7			3,4

COMMENTS: Motion by Austin to approve all items not held for discussion; seconded by Casillas. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

- A. PUBLIC EMPLOYMENT
 Title: Executive Officer
- B. Commissioner Austin: Bradley Fields, Esq., on behalf of **2004-01***, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges from the Sheriff's Department.
- C. Commissioner Casillas: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Norman Jackson**, former Supervising Communicable Disease Investigator, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

OPEN SESSION AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and approved by the Commission President.

MINUTES

1. Approval of the Minutes of the regular meeting of July 21, 2004.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: Richard Pinckard, Esq., on behalf of **2004-08***, former Sergeant-Detentions, appealing an Order to Terminate and Charges from the Sheriff's Department.

Confirmed.

WITHDRAWALS

3. Commissioner Newman: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Vivian Chee**, Licensed Mental Health Clinician, appealing an Order of Suspension and Charges from the Health and Human Services Agency (HHSA).

Withdrawn.

4. **Regina Mitchell**, Residential Care Worker I, HHSA, appealing her non-selection for the classification of Residential Care Worker II by the HHSA. (Continued from the July 21, 2004 Commission meeting. See Item No. 7.)

Withdrawn.

DISCIPLINES

Findings

5. Commissioner Austin: Bradley Fields, Esq., on behalf of **2004-01***, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - dishonesty (untruthful about amount of times smoked marijuana); Cause II - Conduct unbecoming an officer of the County; Cause III - Failure of good behavior; Cause IV - Acts which are incompatible with and/or inimical to the public service.

Appellant was a Deputy Sheriff-Detentions/Court Services. He and his fiancé voluntarily but unwittingly gave the Sheriff's Department a recording of their conversations, which contained several incriminating statements. The statements evidenced that Appellant had recently used marijuana several times

during off-duty hours while employed as a Deputy Sheriff. Appellant admitted using marijuana one time while employed with the Sheriff's Department but denied any further use. Appellant objected to introduction of the tape on the basis of Penal Code Section 632. That section makes it illegal to record confidential conversations and prohibits such recordings to be used as evidence in various proceedings, including administrative proceedings. The hearing officer overruled the objection upon the reasoning that the exclusionary rule of Section 632 did not apply. In any case, the recording could be used to impeach Appellant regarding his truthfulness in denying marijuana use. Appellant and his fiancé also gave alternative interpretations of their recorded comments. However, the recording left little room for doubt that their proper interpretation supported the Department's charges. It is therefore recommended that the Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations;
seconded by Newman. Carried.**

6. Commissioner Casillas: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Norman Jackson**, former Supervising Communicable Disease Investigator, appealing a Final Order of Removal and Charges from the HHSA.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Norman Jackson from a written Order of Removal and Charges in the class and position of Supervising Communicable Disease Investigator (Class No. 5794) in the Health and Human Services Agency was presented to the Civil Service Commission. The Commission appointed A. Y. Casillas, to hear the appeal and submit findings and recommendations to the Civil Service Commission. Prior to the commencement of the hearing the parties entered into a Stipulation.

As part of the agreement, the originally imposed Order of Removal and Charges will be withdrawn. Appellant has submitted a letter withdrawing his appeal before the Civil Service Commission. Additionally, Appellant has tendered a letter of resignation to HHSA.

The hearing officer has reviewed the stipulated agreement and the letter of withdrawal and has determined that the County government would be best served if the Commission acknowledges the filing of the withdrawal of appeal and the Final Order of Removal. It is therefore recommended that the Civil Service

Commission acknowledge the filing of the withdrawal of Appellant's appeal of the Order of Removal and Charges; that the Civil Service Commission acknowledge the filing of the withdrawal of the Final Order of Removal by the Agency; that the Commission read and file this report; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Krauel. Carried.

DISCRIMINATION

Findings

7. Commissioner Krauel: **Regina Mitchell**, Residential Care Worker I, HHSA, alleging race discrimination by the HHSA. (Continued from the July 21, 2004 Commission meeting. See Item No. 4.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on May 5, 2004 the Commission appointed Francesca Krauel to investigate the complaint submitted by Regina Mitchell, alleging race discrimination by the Health and Human Services Agency. In accordance with the established rules and procedures of the Civil Service Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. Ms. Mitchell's complaint also included a Rule X selection process appeal, which has been held in abeyance pending the outcome of the discrimination investigation. Ms. Mitchell has subsequently filed a withdrawal to her selection process appeal.

The Investigating Officer has taken into consideration all documentation presented, including the report of OIA and the Job Announcement for the position sought by Ms. Mitchell that included Job Requirements and Pre-Employment Requirements. The evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that this complaint be denied; the Commission acknowledge that Ms. Mitchell has withdrawn her selection process appeal; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding of no probable cause that the Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Krauel to approve Findings and Recommendations; seconded by Newman. Carried.

OTHER MATTERS

Seal Performance Appraisal

8. **Steven Berkowitz**, Administrative Secretary I, Treasurer/Tax Collector, requesting the sealing of a Performance Appraisal for the period January 14, 2003 to January 13, 2004.

RECOMMENDATION: Consider all written and verbal input.

Mr. Berkowitz addressed the Commission and explained that it took 6 months to receive his final Performance Appraisal. He also stated that he believed that there were procedural inconsistencies regarding dates.

Detra Williams, Personnel Officer for the Department, explained that the delay in presenting Mr. Berkowitz his final Performance Appraisal was due to the voluminous file and careful review by the appraiser. Commissioner Austin reflected that the Department made a concerted effort to undertake a thorough review and no one would be served by the sealing of this appraisal.

Motion by Austin to oppose sealing of performance appraisal; seconded by Newman.

Discussion: Prior to voting on the above motion, Commissioner Krauel set forth the possible need for a new process regarding the sealing of performance appraisals. She briefly described to staff that perhaps some sort of graphing detail would be helpful regarding the chronology of the performance appraisal review process. Discussion ensued, and staff was directed to take this matter under submission. This matter will be discussed at a later date as process is discussed and refined between the Commission and Staff.

Motion carried.

Extension of Temporary Appointments

9. Department of Planning and Land Use

A. 2 Land Use Technicians I (Debra Frischer, Heather Steven)

B. 1 Fire Code Specialist II (Edgar Hayman)

10. Office of Emergency Services

1 Emergency Services Coordinator (Mark Clark)

11. Health and Human Services Agency

1 Residential Care Worker II (Kelsey Dix)

RECOMMENDATION: Ratify Item Nos. 9-11.

Item Nos. 9-11 ratified.

12. Public Input.

ADJOURNMENT: 3:00 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: SEPTEMBER 1, 2004

* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).